STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 22, 2005
v MANZELL C. SAMPSON, Defendant-Appellant.	No. 254524 Wayne Circuit Court LC No. 01-000390-01

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v MANZELL C. SAMPSON, Defendant-Appellant.	No. 254525 Wayne Circuit Court LC No. 01-001208-01

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from his jury-based convictions of three counts of armed robbery, MCL 750.529, and one count of safe breaking, MCL 750.531, in these consolidated cases arising from two robberies that occurred within hours of each other.[1] We affirm.

I. Facts

[1] This is defendant's second trial. The first jury trial resulted in convictions of two counts of armed robbery, one count of safe breaking, and one count of felony-firearm. However, the case was reversed and remanded on appeal because the prosecution inadvertently provided potentially damaging evidence to the jury that was not admitted at trial. *People v Sampson*, unpublished opinion per curiam of the Court of Appeals, issued October 2, 2003 (Docket No. 239329).

On the afternoon of November 25, 2000, defendant entered a CVS Pharmacy at the corner of Seven Mile and Schoenherr in Detroit with a backpack chained and padlocked to his body. Defendant handed the assistant manager a note stating that he was armed, that he had a bomb, and that if the employee did everything that he asked everyone would "live through this." The assistant manager noticed wires hanging from defendant's backpack and believed defendant had a gun in his pocket. Defendant demanded the money from the safe, upon which the assistant manager unlocked the safe but explained to defendant that it would not open until a two-minute timer had run. Defendant then spoke into a walkie-talkie attached to his bag and reported the delay. The assistant manager heard a voice respond, "if it doesn't open up in two minutes, shoot him." When the safe opened, defendant took all the money and lottery tickets that could fit into his briefcase. Defendant told the assistant manager to lie on the floor, then stated "I'm doing this against my will. They're making me do this." Defendant told the manager his name and left the store.

Shortly thereafter, defendant appeared at the Murray's Auto Parts on Gratiot and Van Dyke, wearing the padlocked backpack and an earpiece. The manager of the store testified that defendant handed him a note, which read as follows:

> The person is armed with a bomb to explode if this letter is not complied with. He is also armed with a handgun to shoot and kill upon my orders.
>
> So, don't turn a robbery into murder. Take this person to the safe. You have 3 to 5 minutes to comply, or you die.

After defendant threatened the manager at gunpoint, the manager surrendered $5,000 from the safe. Upon leaving the store, defendant said, "my name is Manzell Sampson, they're making me do it."

At trial, defendant admitted to committing the robberies but maintained that he did so under duress. Defendant testified that he had stopped at a gas station to put air in his tire when he was approached by a man with a handgun, who forced defendant to drive him to an alley. According to defendant, an accomplice appeared, then the two men chained a backpack to defendant and insisted that he take a plastic gun. Defendant elaborated that the pack smelled of gasoline and had an electrical wire protruding from it, and that the men told him that it was a remotely controlled bomb. Defendant maintained that his assailants then used a walkie-talkie to direct his entire crime spree, after which defendant went to the police and reported that he had been kidnapped and forced to commit the robberies.

II. Sufficiency of the Evidence

Defendant argues that the evidence presented at trial was insufficient to show beyond a reasonable doubt that he was not acting under duress at the time of the offenses. In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In this case, viewing the evidence in a light most favorable to the prosecution means disregarding the duress theory entirely, while accepting at face value defendant's and the

victims' accounts of defendant's carrying out the robberies. Defendant's sufficiency challenge must fail.

Despite defendant's framing of his appeal as a challenge to the sufficiency of the evidence, that characterization is inapt because he asserts, in effect, that the jury was obliged to believe his story of duress, and that the guilty verdict was therefore against the great weight of the evidence. See *People v Lemmon*, 456 Mich 625, 633-636; 576 NW2d 129 (1998) (discussing and distinguishing sufficiency claims and those predicated on the great weight of the evidence). However, great weight challenges are for the trial court to decide in the first instance. See *id.* at 641-642. Defendant never sought such a ruling from the trial court, thus failing to preserve this issue. Unpreserved issues are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Had defendant raised a great weight challenge below he would have been properly rebuffed. A trial court may disturb a jury's verdict "only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *Lemmon, supra* at 627. "[I]n general, conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial." *Id.* at 643 (internal quotation marks and citations omitted).

A defendant asserting the affirmative defense of duress must present some evidence on each element of that defense before the prosecutor has a burden of disproving it beyond a reasonable doubt. *People v Lemons*, 454 Mich 234, 247-248; 562 NW2d 447 (1997); *People v Terry*, 224 Mich App 447, 453-454; 569 NW2d 641 (1997). In this case, defendant presented evidence that he had been kidnapped, fitted with a bomb, and forced to commit the robberies. However, the prosecutor vigorously cross-examined defendant on this theory, exposing some inconsistencies in defendant's testimony in the process. The jury was free to disbelieve defendant's kidnapping story, which was the foundation of his entire defense. Questions of credibility should be left for the trier of fact. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Through cross-examination of defendant, the prosecution carried its burden of disproving defendant's affirmative defense. The evidence did not preponderate heavily in favor of defendant's unusual story of kidnapping and coercion, and thus it would not be a miscarriage of justice to allow the verdict to stand. See *Lemmon, supra* at 627. For these reasons, we affirm defendant's convictions.

However, we note that the judgment of sentence for Case No. 01-001208-01 incorrectly indicates that defendant was convicted by plea instead of through a jury trial. "Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time . . . ." MCR 6.435(A); see also *Avant, supra* at 521. For these reasons, we remand this case for the ministerial purpose of correcting the judgment of sentence to reflect that defendant was convicted in a jury trial.

Affirmed, but remanded for correction of the judgment of sentence in lower court number 01-001208-01. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Pat M. Donofrio